

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

| | | |
|-------------------------------------|---|-------------------------------|
| <u>IN THE MATTER OF:</u> |) | |
| |) | |
| Alabama River Cellulose LLC |) | CONSENT ORDER NO. 16-____-CAP |
| Perdue Hill, Monroe County, Alabama |) | |
| |) | |
| <u>Air Facility ID No. 106-0010</u> |) | |

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department”) and Alabama River Cellulose LLC (hereinafter, “the Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee operates a Pulp Mill (hereinafter, “the Facility”) located in Perdue Hill, Monroe County, Alabama (ADEM Air Facility No. 106-0010).
2. The Department is a duly constituted Department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code §22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to

administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. The Department issued the current Major Source Operating Permit No. 106-0010 (hereinafter, “the Permit”) to the Permittee on September 9, 2015, with an effective date of January 1, 2016 and an expiration date of December 31, 2020.

5. The United States Environmental Protection Agency’s New Source Performance Standards (NSPS) 40 CFR Part 60 – Subpart Db – Standards of Performance for Industrial-Institutional Steam Generating Units, is incorporated by reference in ADEM Administrative Code r. 335-3-10-.02(2)(b).

6. The Permit authorizes the Permittee to operate No. 8 Power Boiler (Unit X017) under certain terms and conditions. Unit X017 is also subject to the requirements of the NSPS.

7. Permit Proviso No. 5 of the Emission Standards section of the No. 8 Power Boiler chapter establishes a Subpart Db limit on the annual capacity of firing fossil fuels, and states: “Pursuant to Section 60.44b(c), Code of Federal Regulations, the fossil fuel annual capacity factor shall be ten (10) percent or less, where the annual capacity factor is defined as the ratio between the actual heat input to the boiler from fossil fuel during a calendar year and the potential heat input to the boiler had it been operated 8,760 hours at the maximum designed heat input.”

8. Permit Proviso No. 6 of the Recordkeeping and Reporting Requirements section of the No. 8 Power Boiler chapter establishes the requirement to maintain records of the amount of natural gas fired, and states: “Records of the amount of Fuel Oil and

natural gas fired shall be made and the annual capacity factor calculated for each calendar year and maintained on file available for review for at least five years.”

DEPARTMENT’S CONTENTIONS

9. On July 28, 2016, the Department received a letter from the Permittee summarizing discovery of a historical recordkeeping omission that resulted in the exceedance of the ten percent fossil fuel annual capacity factor. The letter detailed the omission as follows:

(a) The omission stemmed from the installation of a new natural gas burner in the No. 8 Power Boiler in June 2014.

(b) Following the installation of the new burner, the natural gas usage records were not updated; therefore the increase in fossil fuel usage was not properly tracked.

(c) After discovering the omission and updating the fossil fuel capacity, the Permittee realized that it had exceeded the permitted ten percent fossil fuel annual capacity factor for the years 2014 (10.7%), 2015 (13.7%), and 2016* (10.7%).

10. Pursuant to Ala. Code §22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this

* As of July 27, 2016.

authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: The Department considers Permittee's failure to comply with the fossil fuel annual capacity factor to be serious violations.

B. THE STANDARD OF CARE: The Permittee failed to exhibit the required standard of care in accounting for the amount of fossil fuels fired.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Compliance with the ten percent fossil fuel annual capacity factor provides an exception to the requirement to install, calibrate, maintain, and operate a NOx Continuous Emissions Monitor System (CEMS), as stated in NSPS Subpart Db. In failing to comply with this limit, the Permittee avoided the costs associated with the installation and operation of a NOx CEMS. The Permittee included in the July 28, 2016 letter a detailed summary of the avoided cost of the installation, calibration, maintenance, and operation of a NOx CEMS from May 2014 through June 2016, as "Attachment 5 – Avoided Cost Calculation". The total avoided cost was \$25,837.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: Upon discovering the recordkeeping omission, the Permittee ceased operation of the No. 8 Power Boiler.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department has no record of Air Division violations at the Facility within the last five years.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay a civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty to resolve this matter amicably without incurring the unwarranted expense of litigation.

11. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code §22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement and, based upon the foregoing and attached contentions, has concluded that the civil penalty is appropriate (*See* “Attachment A”, which made a part of the Department’s Contentions).

12. The Department neither admits nor denies Permittee’s contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without unwarranted expenditure of State resources in prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

PERMITTEE’S CONTENTIONS

13. The Permittee states that its exceedance of the 10% fossil fuel capacity factor during calendar years 2014 through 2016 was inadvertent, involving a previously-unknown accounting oversight in tracking gas usage by the No. 8 Power Boiler; that it voluntarily disclosed the oversight to the Department orally and in writing promptly upon discovery in July 2016; and that it immediately shut down the boiler and began

investigating the cause of the oversight upon discovery. The Permittee states further that it has instituted new and improved gas usage tracking systems and management oversight procedures to ensure that any similar accounting oversight does not recur.

14. The Permittee neither admits nor denies the Department's Contentions. The Permittee consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement and has determined that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this Consent Order with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$50,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department

of Environmental Management
Post Office Box 301463
Montgomery, Alabama 36130-1463

C. The Permittee agrees to comply with the required 10% annual capacity factor on or before January 1, 2017 and continuously thereafter.

D. The parties agree that this Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of the Consent Order, to execute the Order on behalf of the party represented, and to legally bind such party.

E. The parties agree that, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the alleged violations and/or deviations which are cited in this Consent Order.

F. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be

overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increase costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Department and the Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances reference herein. Should additional facts and circumstances be discovered in the future concerning the Facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation, or enforcement action based on the

issuance of this Consent Order if future orders, litigation, or other enforcement action addresses new matters not raised in this Consent Order.

I. The Department and the Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of the same.

J. The Department and the Permittee agree that this Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

K. The Department and the Permittee agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

L. The Department and the Permittee agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

M. The Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

N. The Department and the Permittee agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State, or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

ALABAMA RIVER CELLULOSE LLC

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

(Signature of Authorized Representative)

Lance R. LeFleur
Director

(Printed Name)

(Printed Title)

(Date)

(Date Executed)

Attachment A

**Alabama River Cellulose LLC
Perdue Hill, Monroe County**

Air Facility ID No. 106-0010

| Violation* | Number of Violations* | Seriousness of Violation* | Standard of Care* | History of Previous Violations | Total of Three Factors |
|-------------------------------------|------------------------------|----------------------------------|--------------------------|---------------------------------------|-------------------------------|
| Failure to Meet Permit Requirements | 3 | \$15,000 | \$10,000 | - | \$25,000 |
| <i>TOTAL PER FACTOR</i> | | <i>\$15,000</i> | <i>\$10,000</i> | - | <i>\$25,000</i> |

| Adjustments to Amount of Initial Penalty | |
|---|--|
| Mitigating Factors (-) | |
| Ability to Pay (-) | |
| Other Factors (+/-) | |
| Total Adjustments (+/-) | |

| | |
|----------------------------------|----------|
| Economic Benefit (+) | \$25,000 |
| Amount of Initial Penalty | \$25,000 |
| Total Adjustments (+/-) | |
| FINAL PENALTY | \$50,000 |

Footnotes

* See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors